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10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues  
13 Against:

14 **JOLENE MARIE SMITH**  
**PO BOX 2281**  
15 **Dublin, California 94568**

16 Respondent.

Case No.

**STATEMENT OF ISSUES**

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about July 22, 2010, the Board of Registered Nursing, Department of  
24 Consumer Affairs received an application for a Registered Nursing License from Jolene Marie  
25 Smith (Respondent). On or about July 20, 2010, Jolene Marie Smith certified under penalty of  
26 perjury to the truthfulness of all statements, answers, and representations in her application. The  
27 Board denied the application on November 17, 2010.  
28

JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2736 of the Business and Professions Code (Code) provides, in pertinent part, that the Board of Registered Nursing (Board) may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

5. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of

1 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
2 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
3 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
4 Section 482.

5 (c) A board may deny a license regulated by this code on the ground that the applicant  
6 knowingly made a false statement of fact required to be revealed in the application for the license.

7 6. Section 492 of the Code states:

8 Notwithstanding any other provision of law, successful completion of any diversion  
9 program under the Penal Code, or successful completion of an alcohol and drug problem  
10 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
11 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
12 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
13 division, from taking disciplinary action against a licensee or from denying a license for  
14 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
15 record pertaining to an arrest.

16 This section shall not be construed to apply to any drug diversion program operated by any  
17 agency established under Division 2 (commencing with Section 500) of this code, or any  
18 initiative act referred to in that division."

19 7. Section 493 of the Code states:

20 Notwithstanding any other provision of law, in a proceeding conducted by a board within  
21 the department pursuant to law to deny an application for a license or to suspend or revoke a  
22 license or otherwise take disciplinary action against a person who holds a license, upon the  
23 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
24 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
25 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
26 and the board may inquire into the circumstances surrounding the commission of the crime in  
27 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
28 qualifications, functions, and duties of the licensee in question.

1 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.

2 8. Section 2761 of the Code states in pertinent part that the board may take disciplinary  
3 action against a certified or licensed nurse or deny an application for a certificate or license for  
4 any of the following:

5 ...

6 (f) Conviction of a felony or of any offense substantially related to the qualifications,  
7 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
8 conclusive evidence thereof.

9 ...

10 9. Section 2762 of the Code states in pertinent part that in addition to other acts  
11 constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act],  
12 it is unprofessional conduct for a person licensed under this chapter to do any of the following:

13 ...

14 (b) Use any controlled substance as defined in Division 10 (commencing with Section  
15 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
16 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
17 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
18 ability to conduct with safety to the public the practice authorized by his or her license.

19 (c) Be convicted of a criminal offense involving the prescription, consumption, or  
20 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
21 or the possession of, or falsification of a record pertaining to, the substances described in  
22 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
23 thereof.

24 (d) Be committed or confined by a court of competent jurisdiction for intemperate use of or  
25 addiction to the use of any of the substances described in subdivisions (a) and (b) of this section,  
26 in which event the court order of commitment or confinement is prima facie evidence of such  
27 commitment or confinement.

28 ...

1 REGULATORY PROVISIONS

2 10. California Code of Regulations, title 16, section 1444, states in pertinent part that a  
3 conviction or act shall be considered to be substantially related to the qualifications, functions or  
4 duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness  
5 of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

6 CAUSE FOR DENIAL OF APPLICATION

7 (Substantially Related Convictions)

8 11. Respondent Jolene Marie Smith's application for a Registered Nursing License is  
9 subject to denial under Code sections 480(a)(1), 480(a)(3)(A), and 480(a)(3)(B), pursuant to Code  
10 sections 492, 493, 2761(f), 2762(b), 2762(c), and 2762(d), by reference to title 16, California  
11 Code of Regulations, section 1444, in that on or about August 7, 2006, she was convicted by her  
12 Nolo Contendere plea to the misdemeanor violation with one prior, of section 23152(b) of the  
13 California Vehicle Code (driving while having a .08% or higher blood alcohol). Respondent was  
14 granted three (3) years conditional probation with conditions, specifically: obey all laws, obey all  
15 court orders, and do not commit the same or similar offense. The Court sentenced Respondent to  
16 serve 30 days jail time subject to the county's alternative work program. Further, the Court  
17 required that Respondent report and enroll in a county approved alcohol program (DDP), not to  
18 operate a motor vehicle unless licensed by the State of California, not drink and drive with any  
19 measureable amount of alcohol or drugs in the blood, and submit to drug, narcotic or alcohol  
20 testing as directed by the probation officer. The circumstances of the conviction are as follows:

21 a. On or about October 2, 2005, during a traffic stop/collision investigation involving  
22 Respondent, California Highway Patrol officers observed Respondent at the scene exhibiting  
23 objective symptoms of intoxication, including slow, slurred speech, mumbling, watery eyes and a  
24 strong odor of alcohol about her. Respondent admitted to the officer that she had a glass of  
25 Chardonnay from 1400 to 1600 hours and told the officer(s) that she drank at her daughter's  
26 house, then said that she drank at her niece's house and finally stated that she drank at her sister's  
27 house. She also told the officer that she was taking medication for hypertension. Respondent  
28 refused to perform any of the Field Sobriety Tests and repeatedly told the officers that she wanted

1 to kill herself. Respondent submitted to a blood test the result of which indicated a blood alcohol  
2 level of .24%.

3 OTHER MATTERS

4 12. On or about January 8, 1986, in the Superior Court of California, County of Alameda,  
5 Case No. 251751, Respondent was convicted of the misdemeanor violation of section 11483 of  
6 the Welfare and Institutions Code (obtaining aid by fraud). The Court granted Respondent 3  
7 years formal probation, ordered her to pay restitution, fines, and to do volunteer work.

8 Respondent completed the terms and conditions of her probation on or about January 6, 1989.

9 13. On or about November 30, 1990, in the Superior Court of California, County of  
10 Alameda, Case No. 335622, Respondent was convicted of the violation of section 23152(a) of the  
11 California Vehicle Code (driving under the influence with a blood alcohol of 0.08% or higher), a  
12 misdemeanor. The Court granted Respondent 3 years of court probation, ordered her to pay  
13 restitution and fines, enroll in DUI school and in the sheriff's work program. Respondent  
14 completed the terms and conditions of her probation on or about November 29, 1993.

15 14. On or about April 16, 1998, Respondent enrolled in an Occupational Health Services  
16 Driving Under the Influence program lasting 18 months in duration. Respondent completed the  
17 program in October 1, 1999.

18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
20 and that following the hearing, the Board of Registered Nursing issue a decision:

- 21 1. Denying the application of Jolene Marie Smith for a Registered Nursing License;  
22 2. Taking such other and further action as deemed necessary and proper.

23 DATED: \_\_\_\_\_

24 *Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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